

Exhibit 89 to the Cobb Declaration

(Dkt. No. 316-5)

REDACTED

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Page 1

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DIVISION OF WASHINGTON
3 AT SEATTLE
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6 IN RE: VALVE ANTITRUST)
LITIGATION)
7) No. 2:21-cv-00563-JCC
_____)

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13 VIDEOTAPED DEPOSITION OF LESLEY CHIOU, Ph.D.
14 Los Angeles, California
15 Tuesday, June 18, 2024
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22 Reported by:

23 RENEE A. PACHECO, RPR, CLR

24 CSR No. 11564
25

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1 the overlap in titles, that is consistent with
2 evidence of demand substitution.

3 Q Microsoft has the Xbox; right?

4 A Yes, it does.

5 Q And Microsoft has the Xbox for Microsoft
6 Store on the Xbox; right?

7 A There is a Microsoft Store. There is also
8 a Microsoft Xbox app for P.C.

9 Q Okay. And on the Microsoft Xbox store or
10 the Xbox Microsoft Store, I should say, Microsoft
11 sells Xbox console versions of games; right?

12 A On the Microsoft Store on Xbox, they sell
13 console games. But Microsoft, as I discuss in my
14 report, has also begun merging the two stores for
15 P.C. and console. They now have a Xbox app for P.C.
16 and Play Anywhere titles where once a title is
17 purchased, it can be played either on a P.C. or on a
18 console.

19 Q Okay. Well, let's stick with my question,
20 though.

21 Microsoft historically has had the
22 Microsoft Store where it sells P.C. versions of its
23 games; right?

24 A Would you please clarify that question?

25 Q Yes.

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1 On P.C.s, there is a Microsoft Store where
2 you can buy Microsoft games; right?

3 A Yes, there is a Microsoft Store on P.C.s,
4 and also one on Xbox.

5 Q To your understanding, does Microsoft pay a
6 commission to itself for sales of the games on the
7 Microsoft Store?

8 MR. CASPER: I object to the form of the
9 question.

10 THE DEPONENT: Would you please clarify
11 what you mean by "pay a commission to itself"?

12 BY MR. WOLFSON:

13 Q Does it charge itself a commission?

14 The answer is no; right?

15 MR. CASPER: Object to the form of the
16 question.

17 THE DEPONENT: Would you please restate the
18 question?

19 BY MR. WOLFSON:

20 Q Does Microsoft charge itself a commission?

21 A I believe that was the same question
22 earlier, so I'm not clear by what you mean by
23 "Microsoft charging itself."

24 I do talk about the different revenue share
25 rates across the different platforms.

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1 Q Does Microsoft, for its sales of Microsoft
2 games on the Microsoft Store, to the best of your
3 knowledge, deduct any amounts or commissions or any
4 other charges that Microsoft charges on the
5 Microsoft Store?

6 A For Microsoft's own titles, I'm not aware
7 of Microsoft charging or administering itself a
8 revenue share rate. Microsoft does, for example,
9 incur costs of distribution.

10 Q Now, Microsoft sells its games on Steam as
11 well; right?

12 A There's some overlap, yes --

13 Q And --

14 A -- in titles.

15 Q Sorry. I didn't mean to cut you off at the
16 end there.

17 But for any sale that Microsoft makes on
18 Valve's Steam store, it owes Valve a revenue share,
19 what we call the 30 percent commission; right?

20 A In exchange for services from Valve,
21 Microsoft does share revenue.

22 Q Okay. So on the Microsoft Store, it does
23 not share revenue, but for sales on the Steam store,
24 it does share revenue. It sells console games on
25 the Microsoft Store for no revenue share. It sells

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1 P.C. games on Steam for a revenue share.

2 To you, is that evidence of
3 substitutability or complementary?

4 A Would you please be more specific in that
5 question? I'm not following the logic.

6 Q Yes.

7 The fact that Microsoft is selling console
8 games on a console store for no revenue share but is
9 still selling P.C. versions of those same games on
10 Valve for revenue share, does that indicate to you
11 that that substitute -- or that's evidence of
12 substitutability between consoles and P.C.s, or is
13 it evidence of complementary between consoles and
14 P.C.s?

15 A This is something that I discuss in my
16 report. It's evidence that there are a wide array
17 of alternative distribution options for Microsoft
18 and for other publishers.

19 It also shows that there are other features
20 that publishers care about when choosing different
21 platforms.

22 So certainly, these are options, these are
23 alternatives, and that's absolutely consistent with
24 substitution.

25 Q Professor Chiou, that wasn't my question.

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1 My question is: With those facts, is that
2 evidence to you of substitute between gaming
3 consoles or P.C.s, or is it evidence of
4 complementary between gaming consoles and P.C.s?

5 A My answer is as before. It's those are
6 options and alternatives. So it's certainly
7 consistent with substitution in which publishers can
8 choose different alternatives to distribute their
9 games.

10 Q Microsoft, one of the biggest gaming
11 console manufacturers in the world, is making its
12 games, it's making both console versions and P.C.
13 versions.

14 To you, does that suggest substitutability
15 between gaming consoles and P.C.s? Am I getting
16 your testimony correct?

17 A Not quite.

18 What I discuss in my report is that there's
19 substitution on the publisher side where they can
20 choose between different platforms, and also on the
21 consumer side as well too where they have options
22 now of purchasing a title -- I have an exhibit on
23 this popular title -- across these different
24 platforms. So that is consistent with alternatives
25 in substitution.

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1 Q Well, if you look at Paragraph 44 of your
2 opinion, on the top of Page 26, you say (as read):

3 "Many platforms are available
4 only on specific devices, so the
5 device a consumer selects to play
6 video games on dictates the
7 platforms available to them. In
8 particular, console devices use
9 proprietary operating systems that
10 integrate the device with the
11 platform, which excludes other
12 platforms from participating."

13 Did I read that correctly?

14 A Yes, you did.

15 One moment while I finish reading.

16 I'm done reading.

17 Q Is that still your opinion?

18 A Yes, this is what I wrote.

19 Q Can you access Steam on an Xbox?

20 A So Steam can be accessed through a variety
21 of ways, through the P.C. or the Steam Deck.

22 Through an Xbox machine, it cannot be accessed.

23 However, something that I discuss, and it's
24 also discussed in the plaintiffs' reports, is that
25 consumers multi-own, they own multiple devices, so

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1 they have an option to select titles across the
2 different platforms.

3 They also have an option, even before they
4 select a device, over what type of platform they
5 want to choose through their selection.

6 Q Okay. So a consumer might view a gaming
7 console or a -- a P.C. as a substitute, but just
8 because a consumer -- something can be substituted
9 for a consumer, can't it also be a complement for a
10 publisher?

11 A Well, what I discuss here in my report is
12 that there is direct evidence of substitution for
13 publishers across different platforms.

14 I also point out, in Dr. Schwartz's report,
15 that he does not rule out that multi-homing, having
16 access to different platforms is -- doesn't rule out
17 that as substitutes and, in fact, it can be, and
18 it's consistent with the evidence.

19 Q Can an Xbox user access Steam or the Epic
20 Games Store for Xbox games?

21 A If an Xbox user has a P.C. and, for
22 example, has Steam, then yes, an Xbox user can.

23 Q That was not my question.

24 Can an Xbox user access Steam to get Xbox
25 games, Xbox console versions of games?

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1 A An Xbox -- well, sorry. Can you please
2 repeat the question?

3 Q Yeah.

4 Can an Xbox user use Steam or Epic Games
5 Store to get a game for their Xbox?

6 A They can use those platforms to get a
7 popular title that's also available on Xbox, but not
8 the Xbox version. However, those are similar -- the
9 same titles are often offered on both.

10 Q On Steam, can -- well, strike that.

11 Now, what about a -- a Xbox user? Can they
12 use the Microsoft Store to get a PlayStation game?

13 A An Xbox user can use the Microsoft Store to
14 get titles that are often also available on
15 PlayStation. This is one of my exhibits.

16 Q So you're saying that if a game is made
17 available across different types of stores, and if
18 the consumer has different types of devices, they
19 might have options of getting a game on P.C. versus
20 a gaming console; right?

21 A I'm saying something a little bit more
22 broad, which is that there are different titles
23 available across different platforms. If a consumer
24 happens to own multiple devices, they have that
25 choice.

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1 Even if a consumer doesn't, they also have
2 a choice over selecting platform, selecting a
3 device, and selecting a title from the beginning.

4 Q And all of this you're saying indicates
5 only substitutability, or is it your opinion that
6 none of this indicates or could indicate
7 complementary?

8 A What I'm saying is that this, as well as
9 the other evidence that I look at indicates -- is
10 completely consistent with substitutability.

11 What I say in my report is that
12 Dr. Schwartz claims that there is -- this
13 multi-homing leads to complementary, but he does not
14 rule that out. And my assignment is focused on
15 looking at Dr. Schwartz's methodologies.

16 Q Here is my question: Are you saying that
17 gaming consoles are substitutes for P.C. gaming?

18 A I'm saying that the evidence is consistent
19 with gaming consoles and P.C.s being substitutes.

20 I go further and talk in the other section
21 about how Dr. Schwartz omits these important
22 substitutes.

23 Q But my question is a little bit -- it's a
24 finer point.

25 Is it your opinion that gaming consoles are

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1 Q Yep. And that would be \$30 under this
2 scenario; right?

3 A Under this scenario, the publisher --

4 Q Yes. That's 30 percent of \$100; correct?

5 A So yeah, that would be a cost that a
6 publisher would bear.

7 Q Okay. So if I want to look at what they --
8 the total costs in revenue share to distribution
9 platforms for these games, I would have to include
10 the \$30 paid to Valve, plus the \$30 paid to the
11 competing platform; correct?

12 A If we're looking at the publisher's --
13 yeah, if you're looking at the publisher's rate --
14 revenue share rate, including what they're paying to
15 the competing platforms, then yes, there is -- there
16 is a cost to that.

17 Q Okay. So that would be 30 plus 30 is the
18 numerator, 60; right?

19 A Yeah, I agree 30 plus 30 is 60, but it's
20 not Valve's portion.

21 Q I get that. But then, if we're looking at
22 the revenue generated in Steam sales and Steam keys
23 sales, the dominator would be 100 plus 100; right?

24 A Yes.

25 Q Okay. Which would mean that the actual

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1 revenue share paid by the publisher is 30 percent;
2 correct?

3 A Yes. If we're looking at the publisher and
4 how they split their share with the Steam key
5 reseller, yes.

6 Q Okay. Great.

7 If I could have that, I'm going to write in
8 30 percent here.

9 Okay. Did I write 30 in the right spot
10 there?

11 A But these two formulas here are calculating
12 two different things.

13 Q Right. Now, I want you to assume
14 something. Assume, using all these facts that we
15 just talked about, or hypothetical ones, assume that
16 Valve charged 25 percent instead of 30 percent, and
17 that you are also looking at the revenue share,
18 including that -- that the publisher is paying to
19 the competing platform, you would agree with me that
20 its actual revenue share would drop from 30 percent
21 to 27.5 percent?

22 A So let's see. So you said the Valve
23 revenue share rate would drop. So that percentage
24 drop, assuming that there's the same revenue that
25 would be computed, yeah, in the numerator.

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1 Q Okay. It would pay less money over all if
2 Valve dropped its commission; right?

3 A According to this hypothetical, yes.

4 Q Okay. Now, let's -- let's look at a
5 different world. All right?

6 MR. WOLFSON: Let's mark this as 4, please.

7 (Plaintiffs' Exhibit 4 was marked
8 for identification.)

9 BY MR. WOLFSON:

10 Q Now, let's assume a world with no Steam
11 keys, but a world with lower commissions. All
12 right?

13 So here, I have got your formula, but the
14 assumptions are Valve's commission is 20 percent.
15 There's 100 revenues -- \$100 in revenue from sales
16 on Steam. And then there's a competing platform
17 that also charges 20 percent. And there's \$100 in
18 publisher revenue on that competing platform, but
19 there's no Steam keys. It's just \$100 in revenue on
20 that platform. Okay? Those are the assumptions I
21 want you to make.

22 Now, am I right that using your formula
23 under these assumptions -- and again, it's publisher
24 revenue, pre-revenue share, et cetera -- that using
25 your formula, the effective revenue share for this

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1 publisher would be 20 percent; right?

2 A Yes, in this scenario.

3 Q If you don't mind, can I have Exhibit 4?
4 I'll write that.

5 Now, I know that the -- you do not have a
6 formula for a world with no Steam keys. But if this
7 publisher is paying a competing platform 20 percent
8 on \$100 in revenue for non-Steam key versions of its
9 game, its actual revenue share paid across Steam
10 sales and competing platform sales would also be
11 20 percent; right? 20 plus 20 on the numerator, 100
12 plus 100 on the denominator?

13 A Across both.

14 Q Okay. If you don't mind.

15 Now, looking at the actual revenue share
16 paid by publisher numbers on -- on Exhibits 2 and 4,
17 you would agree with me that a world in which Valve
18 has a lower commission than today benefits the
19 publisher; right?

20 A So looking at this particular hypothetical
21 here, there is -- the effective revenue share rate
22 changes from 15 percent to 20 percent.

23 Q I didn't ask about that. I asked about the
24 actual revenue share rate. Let's look -- so you
25 agree that in the world -- first of all, in Scenario

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1 1, Exhibit 2, in the scenario where only Valve
2 lowered its commission, its revenue share, and the
3 competing platform did not, that the actual amount
4 of revenue share that the publisher pays is less;
5 right?

6 A Across the two platforms, yes.

7 Q And you would agree that in a world where
8 Valve and the competing platform both charge lower
9 commission rates, the actual revenue share number --
10 this is Scenario 2, Exhibit 4 -- is lower for the
11 publisher; right?

12 A Yeah, in this hypothetical, yes.

13 Q Okay. Thank you.

14 You can set those aside.

15 You said before that ■ percent -- you're
16 aware of ■ percent of game publishers utilizing
17 Steam keys?

18 A I said that that was Dr. Schwartz's
19 estimate of the number of publishers that check the
20 checkboxes on the Steam key request form.

21 Q Okay. Did you see anything -- or did you
22 see any data that indicates that that number is
23 wrong?

24 A The data that I saw indicated that
25 publishers vary widely in their use of keys.

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1 Q Have you any reason to doubt that
2 ■ percent of the publishers have used Steam keys?

3 A So Steam keys do vary in their usage. What
4 I talk about in my report is that Dr. Schwartz
5 mishandles the processing of the keys.

6 So what I'm saying in -- in reference to
7 the ■ percent is that he is using that in one way
8 as evidence of this classwide or common knowledge.

9 And what I'm saying is even given that,
10 that is not common knowledge, and also, I do a
11 direct test with actual data.

12 Q If ■ percent of game publishers were aware
13 that Valve has a checkbox requirement that they
14 cannot price Steam key games lower than on -- on
15 Steam store, it's your opinion that there is not
16 widespread knowledge of this requirement?

17 A So the evidence is inconsistent with there
18 being any alleged price parity. As far as the
19 ■ percent, those are the ones that check the
20 checkboxes.

21 According to Dr. Schwartz, what I describe
22 in my report is it varies of the ■ according to
23 Dr. Schwartz, how many read the key request form,
24 how did they interpret it, did it ultimately change
25 their actions.

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1 Q You're -- you're aware that Valve's
2 Software Development Agreement, the SDA, indicates
3 that Steam keys are not subject to Valve's revenue
4 share; right?

5 A Are you referring to the SDA?

6 Q Yeah.

7 A The Standard Distribution Agreement?

8 Q Standard Distribution Agreement, yes.

9 A Okay. Yeah, sorry, would you please repeat
10 the question again?

11 Q Yeah. It's -- it says that Steam keys are
12 not subject to Valve's revenue share?

13 A That Steam keys are not subject to revenue
14 share? Publishers don't pay a revenue share for
15 that.

16 Q Okay. And Valve's aware that the amount of
17 Steam keys issued and redeemed varies by game and --
18 and publisher; right?

19 A Issuances and redemptions, yes, vary.

20 Q Okay. And the -- the pricing rules don't
21 vary depending on the amount of Steam keys issued
22 and redeemed; right?

23 A Which pricing rules are you referring to?
24 I have no -- there is no evidence of any alleged
25 pricing parity.

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1 Q I'm sorry. The revenue share rules, they
2 don't vary based on how many Steam keys are issued
3 or redeemed by you, right, as a publisher?

4 A The effective revenue share rate does vary.

5 Q That's not what I asked.

6 I said the revenue for Steam key --
7 Steam -- sales on Steam, that doesn't raise or lower
8 depending on how many Steam keys sell and redeems or
9 it gets in the first place; right?

10 A Can you repeat that again, the last part?

11 Q Yeah. Valve doesn't say, If you get more
12 Steam keys, you owe us more in terms of revenue
13 share; right?

14 A The revenue share is 0 percent for Steam
15 keys.

16 Q That's not what I was asking.

17 For games sold on Steam, on the Steam
18 store, Valve does not say, Well, if you get so many
19 Steam keys and redeem them, then you're going to owe
20 us a higher revenue share, right, for games sold on
21 the Steam store?

22 A Oh, I see what you're saying. The nominal
23 rate is independent of the keys.

24 Q Okay. Now, if Valve -- well, when Valve
25 changed to its -- its structured tiers, it didn't

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1 the -- we talked about the indirect network effects
2 of Valve's two-sided platform and the features it
3 offers publishers. Some publishers might like some
4 of the features Valve offers. Some might not care
5 about those features; right?

6 A So I would say there's a difference, yes,
7 in the features and how they're valued by
8 publishers.

9 Q Okay.

10 A And that, in general, Steam is more
11 feature-rich.

12 Q Okay. So Steam, by being feature-rich,
13 that's one of the ways it competes; right?

14 A It competes on quality.

15 Q Okay. Now, if Steam were to keep all those
16 same features, its competitors were to keep all the
17 same features, but the only difference is that
18 Steam -- or that Valve dropped its revenue share,
19 wouldn't you agree that publishers selling on Steam
20 are all going to benefit in terms of paying Valve
21 less money?

22 A So I believe this is a similar question to
23 what was asked before, in which you said to keep the
24 features constant and to drop the rate. And my
25 response there was that by dropping the rate, may

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1 not be able to keep the existing features.

2 But in general, consumers or publishers,
3 they do care about price, and they also care about
4 features.

5 Q And you haven't done any analysis showing
6 that had Valve dropped its commission even a decade
7 ago, that they would have been unable to introduce
8 or maintain the features it has today; right?

9 A Well, my assignment is to assess
10 Dr. Schwartz's methodology and his determination of
11 what would happen with price and features in the
12 but-for world.

13 Q He -- he concluded, actually, that Valve
14 could have dropped its commission and increased its
15 innovation, didn't he?

16 A Dr. Schwartz assumed that. He did not show
17 why that would be the case. He also did not
18 establish any -- with any common-wide evidence how
19 the value of the quality adjusted rates would affect
20 each publisher.

21 Q Well, we have already agreed, Professor
22 Chiou, that each publisher inherently has a
23 different value for Valve's services; right?

24 A Yeah, they vary in their benefits.

25 Q Okay. Are you saying that there's no world

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1 in which we could show that -- that publishers would
2 benefit on the whole from a lower -- from paying
3 Valve less, just because they value Valve's services
4 slightly differently?

5 MR. CASPER: Object to the form of the
6 question.

7 THE DEPONENT: So what I'm saying is that
8 in this but-for world, there are new entrants.
9 Everyone will -- all the platforms will be choosing
10 prices and features, and that each publisher, then,
11 would have their own preferences and substitute
12 across different platforms.

13 So this would affect the rate that they
14 pay, and also, the sales that they make.

15 BY MR. WOLFSON:

16 Q So in this but-for world that you're
17 talking about, there would be more competition?

18 A So what I'm saying is that based upon what
19 Dr. Schwartz is saying about there being more
20 competition in this but-for world, I'm evaluating
21 his rationale and line of reasoning there.

22 Q In his positive but-for world, he concludes
23 there would be more competition in terms of number
24 of entrants, price competition, and quality
25 competition; right?

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1 A Professor Schwartz claims changes in the
2 but-for world.

3 However, my assignment is about whether or
4 not he can establish classwide impact or damages in
5 that but-for world. I find that he cannot.

6 Q If a but-for world includes more entrants
7 competing, lower prices, higher quality than the
8 real world and the real world exists due to
9 anticompetitive conduct, it's your opinion that
10 that's not classwide anticompetitive impact?

11 MR. CASPER: Object to the form of the
12 question.

13 THE DEPONENT: Yeah. Would you please
14 restate the question?

15 BY MR. WOLFSON:

16 Q If a but-for world includes more entrants
17 competing, lower prices overall, higher quality
18 overall than the real world, and the real world is
19 what it is due to anticompetitive conduct, it's your
20 view that that does not establish classwide impact?

21 MR. CASPER: Same objection.

22 THE DEPONENT: The classwide impact is
23 looking at the publisher's decisions and whether or
24 not -- and not assuming that there is, as you say, a
25 common change in price, a common change in quality,

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1 a common change in innovation.

2 In this but-for world, platforms would come
3 in and choose different prices -- potentially
4 different prices and different features.

5 And that ultimately is going to lead
6 publishers, based upon their own preferences, to
7 choose different combinations of platforms, for
8 example. That's going affect their revenue share
9 rate and their sales on a individual basis.

10 BY MR. WOLFSON:

11 Q Are you saying that their sales would go
12 down or their costs would go up in this world where
13 they have more choices?

14 A In a world where they have more choices,
15 theoretically, there are different prices and
16 different combinations of prices and features, and
17 it's going to change on a publisher-by-publisher
18 level. So whether or not it affects sales, that's
19 an individualized question.

20 Q Have you identified any category of
21 publishers that you believe would have less sales
22 overall in the but-for world from the elimination of
23 what is alleged to be Valve's anticompetitive
24 conduct?

25 A What I describe in my report is that the

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1 sales depend upon the different pricing, the
2 features, and the sensitivity of consumers.

3 So that is a question that Dr. Schwartz
4 needs to be able to address on a classwide basis,
5 and I find that he cannot. My assignment is to
6 assess his methodology.

7 Q My question is: Have you identified any
8 category of publisher that you believe would have
9 less sales in the but-for world?

10 A So what I'm saying is that publishers'
11 sales in the but-for world are going to -- are going
12 to change. It's going to depend upon the
13 combination of prices and quality.

14 Q Well, if their sales change by going up,
15 you agree that's a benefit, wouldn't you?

16 A As to whether or not that's a benefit, it
17 depends upon the trade-off between the prices that
18 they can sell, the quantities they can sell, the
19 revenue share rates they can pay, and also, any of
20 these individualized, for example, exclusive deals
21 with EGS. So that's all part of the but-for world.

22 Q And my question is: Have you identified
23 any publisher or publishers or category of
24 publishers that you believe would have lower sales
25 in the but-for world?

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1 A So what I'm saying is that as far as
2 identifying the publishers, I'm looking at
3 Dr. Schwartz's methodology in which he assumed that
4 all the publishers would have no change in sales.

5 Q Okay.

6 A So that's my assignment and my opinion.

7 Q All right. So the answer is no, you have
8 not identified any category of publisher that you
9 think would have lower sales if Valve had to stop
10 pushing its PMFN in the market; right?

11 MR. CASPER: Object to the form of the
12 question.

13 THE DEPONENT: Would you please be more
14 specific?

15 BY MR. WOLFSON:

16 Q You have not identified any category of
17 publisher -- let's just be broader -- that you
18 believe would be harmed in the but-for world?

19 A In fact, what I say is I give examples of
20 publishers that may actually be worse off in the
21 but-for world. They would lose, for example, the
22 exclusive deals with EGS. This is something that
23 Professor Rietvald also discusses in his report. So
24 that must be taken into account.

25 But it's possible that there are publishers

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1 that in losing these deals, would be harmed in the
2 but-for world.

3 Q Okay. So -- so publishers that had
4 exclusives on Epic Games Store, you haven't shown,
5 through any sort of mathematical or other type of
6 analysis, that you believe that they would be harmed
7 in the sense of either making less sales or making
8 less money in the but-for world?

9 A So what I do is I look at examples of this.
10 But, once again, there is not data currently
11 available. It requires individualized inquiry to
12 look at what were the nature of the deals.

13 As I said before, Professor Rietvald
14 himself also says that in a but-for world, these
15 exclusive deals would also go away.

16 Q Okay. Exclusive deals on Epic Games, you
17 hypothesized that there might be some harm to
18 those -- to those who had exclusive deals on Epic
19 Games; right?

20 A What I --

21 MR. CASPER: Object to the form of the
22 question.

23 THE DEPONENT: I'm sorry. Would you please
24 repeat the question?

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